

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ERIC FIERRO,

Petitioner,

v.

No. 2:17-cv-00738 JCH-KBM

R.C. SMITH, *Warden*,
ATTORNEY GENERAL FOR
THE STATE OF NEW MEXICO,

Respondents.

ORDER DENYING MOTION TO RECONSIDER

Before the Court is Petitioner Eric Fierro's Motion for Reconsideration. (Doc. 17).

Petitioner asks the Court to reconsider its Memorandum Opinion and Order denying his motion to appoint counsel in connection with his 28 U.S.C. § 2254 habeas corpus proceeding. (Doc. 16).

As grounds, Petitioner argues he is dyslexic and has obsessive compulsive disorder ("OCD") and attention deficit hyperactivity disorder ("ADHD").

The denial of a motion to appoint counsel in a non-criminal case is interlocutory. *See Hill v. Corrections Corp. of America, Inc.*, 189 Fed. App'x 693, 697 n. 3 (10th Cir. 2006) (citing *Cotner v. Mason*, 657 F.2d 1390, 1391-92 (10th Cir. 1981)). Reconsideration of interlocutory orders is governed by Fed. R. Civ. P. 54(b), which provides that such orders "may be revised at any time" at the Court's discretion. *See Ankeney v. Zavaras*, 524 Fed. Appx. 454, 458 (10th Cir. 2013). "For guidance, the [C]ourt may look to the standard used to review a motion made pursuant to [Fed. R. Civ. P.] 59(e)." *Id.* Grounds for reconsideration under Rule 59(e) include: "(1) an intervening change in the controlling law, (2) new evidence previously unavailable, and (3) the need to correct clear error or prevent manifest injustice." *Servants of the Paraclete v. Does*, 204 F.3d 1005, 1012

(10th Cir. 2000).

After carefully considering the Motion, the Court concludes reconsideration is not warranted under Rules 54 or 59. Petitioner appears to argue he is unable to present his habeas claims due to his dyslexia, OCD, and ADHD, which is one factor to consider when appointing counsel. *See Williams v. Meese*, 926 F.2d 994, 996 (10th Cir. 1991). Notwithstanding these limitations, however, Petitioner prepared a detailed habeas petition that survived initial review and submitted various other cogent filings containing legal and factual support for his positions. The Court is therefore still not convinced that counsel should be appointed.

IT IS ORDERED that the Motion for Reconsideration (Doc. 17) is DENIED.


UNITED STATES MAGISTRATE JUDGE